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Letter dated 18 February 2015 from the Chair of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, I have the honour to submit to the Security Council the report on the sixth prosecutors' seminar on bringing terrorists to justice, held in Valletta from 15 to 17 December 2014 (see annex).

The seminar focused on challenges in prosecutions related to foreign terrorist fighters and is part of a series of seminars initiated by the Committee that are facilitated by the Counter-Terrorism Committee Executive Directorate for prominent prosecutors of counter-terrorism cases at the national level. Participants at the seminar succeeded in identifying many of the main challenges and good practices in addressing the phenomenon of foreign terrorist fighters through the criminal justice system, as required by resolutions 1373 (2001) and 2178 (2014).

I should be grateful if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Raimonda **Murmokaitė**
Chair
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters

I. Context

1. In adopting its resolution 2178 (2014) on 24 September 2014, the Security Council delivered a clear message that Member States and the international community must take proactive measures to address the threat posed by foreign terrorist fighters. Recalling its resolution 1373 (2001), the Council reiterated the requirement that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts be brought to justice and decided that all States would ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense. A strong criminal justice system that includes a robust, proactive prosecution service is thus essential to the effective implementation of the resolution.

2. In order to support Member States in their efforts to address the challenges of bringing terrorists to justice, the Counter-Terrorism Committee Executive Directorate, acting on behalf of the Counter-Terrorism Committee, has been engaged in facilitating a series of seminars for prominent prosecutors of counter-terrorism cases at the national level on bringing terrorists to justice. The initial seminar, held at United Nations Headquarters in December 2010, was followed by seminars in: Ankara in July 2011, Algiers in June 2012, Dar es Salaam, United Republic of Tanzania, in February 2013 and Tunis in December 2013.

3. Each follow-up seminar has addressed one of the major themes identified at the initial event. In Ankara, participants focused on the use of intelligence and information obtained through special investigative techniques as evidence in terrorism cases. The seminar in Algiers focused on the strategic and operational roles of the prosecutor in preventing terrorism. In Dar es Salaam, participants addressed the policy considerations and implications of prosecuting terrorist acts. In Tunis, participants discussed the challenges of prosecuting cases relating to terrorists acting alone or in small cells.

4. The Counter-Terrorism Committee Executive Directorate has also developed, with its implementing partners, a number of related initiatives, drawing on the experiences shared and lessons learned during the above events. Since 2009, the Executive Directorate has conducted a series of workshops involving judges, prosecutors and police officers in South Asia. The workshops, nine of which have been held to date, were funded by the Governments of Australia, Canada, Denmark, India and the United States of America. In May 2013, in Kampala, the Executive Directorate, together with the Global Center on Cooperative Security, launched a series of five workshops for law enforcement officers and prosecutors from East African Member States, with the support of Australia and New Zealand. A subsequent workshop was held in October 2014, in Nairobi, on the need for early engagement between police and prosecutors and the conversion of intelligence and information into admissible evidence. The aim of the remaining workshops in the series is to strengthen the capacities of prosecutors and police officers in Burundi,

Kenya, Rwanda, the United Republic of Tanzania and Uganda and to investigate and prosecute terrorism cases at the national and regional levels.

5. The Executive Directorate is also working with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) to help States conduct effective counter-terrorism investigations and prosecutions while ensuring respect for human rights and the rule of law. The initiative was launched in Geneva in October 2013, with the support of Switzerland, and is being implemented in the context of long-term regional programmes in the Maghreb, with the support of the European Union, and South Asia, with the support of the United States. Both programmes include country-specific activities and subregional workshops aimed at strengthening States' criminal justice responses to terrorism within a rule of law framework and ensuring compliance with the relevant counter-terrorism instruments, human rights standards, and Security Council resolutions. In November 2013, the Executive Directorate and the Terrorism Prevention Branch of UNODC, with the support of the European Union, launched an 18-month programme to support the security and justice authorities of Nigeria, most recently organizing an inter-agency cooperation and coordination workshop for security and justice agencies, held in Abuja in December 2014.

II. Seminar on challenges in prosecutions related to foreign terrorist fighters

A. Introduction

6. The sixth seminar within the framework of the practitioners' series was held in Valletta from 15 to 17 December 2014, in cooperation with the International Institute for Justice and the Rule of Law. In accordance with Security Council resolution 2129 (2013), which directs the Counter-Terrorism Committee Executive Directorate to identify emerging issues, trends and developments related to resolutions 1373 (2001) and 1624 (2005), and in the light of resolution 2178 (2014), the seminar focused on challenges in prosecutions related to foreign terrorist fighters.

7. Terrorism is a unique and evolving crime, and prosecution is recognized as a key component of a State's overall approach to the effective prevention and suppression of terrorism. However, terrorism cases pose specific challenges to prosecutors, in particular with respect to the collection of admissible evidence and the successful prosecution of relevant preparatory offences. The sixth seminar was attended by about 40 prominent prosecutors of counter-terrorism cases at the national level, senior government officials, and representatives of international and regional organizations and civil society. The participating prosecutors represented various world regions, development levels and legal systems.

8. Opening statements were delivered by the Attorney General of Malta, Peter Grech, the Chief of the Middle East, Europe and Central Asia Section of the Counter-Terrorism Committee Executive Directorate, Ahmed Seif El-Dawla and the Interim Executive Secretary of the International Institute for Justice and the Rule of Law, Robert Strang. Speakers highlighted the ever-evolving nature of terrorism trends and offences and the need for prosecutors and criminal justice systems to adapt in order to effectively bring terrorists to justice. The phenomenon of foreign terrorist fighters was a global challenge that demanded a global response. Never

before had international cooperation been so essential, and never before had the need to share information been so urgent. Speakers noted the progress already achieved in the area, including the adoption of Security Council resolution 2178 (2014), the development of the Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighter Phenomenon of the Global Counterterrorism Forum, and the multidimensional programme on foreign terrorist fighters to be launched at the International Institute for Justice and the Rule of Law in February 2015. The Executive Directorate was also collaborating with the Terrorism Prevention Branch of UNODC in the development of that Branch's global project on strengthening the legal regime against foreign terrorist fighters in Middle Eastern and North African countries. The practitioners' seminars were inspired by the goal of facilitating the sharing of experiences and information by prosecutors on specific challenges. Speakers reiterated that all counter-terrorism measures must be implemented in compliance with international law, in particular human rights law. The Coordinator of the Legal and Criminal Justice Working Group of the Counter-Terrorism Committee Executive Directorate, David Scharia, described the relevant Security Council resolutions, in particular the requirements of resolution 2178 (2014), and outlined the context and aims of the practitioners' series, the challenges and priorities previously addressed and the particularities of the phenomenon of foreign terrorist fighters.

9. The three-day seminar consisted of panel discussions that addressed specific aspects of the central theme (see enclosure). On 16 December 2014, the second day of the seminar, participants considered a hypothetical scenario, discussing the various issues raised and comparing their respective national approaches and laws. The following summary reflects participants' comments. The discussions were held in accordance with the Chatham House Rule.

B. Summary of discussions on the complex challenge of bringing foreign terrorist fighters to justice

10. The term "foreign terrorist fighters" has gained increasing prominence in political and public debate over the past year and was elevated to the global agenda with the adoption of Security Council resolution 2178 (2014). The resolution was explicitly supported by more than 104 States and was unanimously passed by the Council on 24 September 2014. In the resolution, the Council decided that all States would ensure that they are able to bring foreign terrorist fighters to justice.

11. Over the course of three days, senior prosecutors from 21 Member States and representatives of seven international and regional organizations analysed the challenges posed by prosecutions relating to foreign terrorist fighters, defined in resolution 2178 (2014) as "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict".

1. New and old challenges for prosecutors

12. Foreign terrorist fighters are not a new phenomenon. Experience gained in past conflicts, such as those in the Horn of Africa, Afghanistan and other regions of the world, could and should be utilized to address the current threat of foreign terrorist

fighters. However, it is also recognized that foreign terrorist fighters are a fast-growing challenge that has exponentially evolved in recent years and that the challenges posed to criminal justice systems are unique and complex. As many participants noted, the phenomenon of foreign terrorist fighters was closely related to the increasing incidence of terrorists acting alone or in small cells, which was the subject of the seminar held in Tunis in December 2013.

13. As with terrorists acting alone, the activities of foreign terrorist fighters are facilitated by globalization and the Internet. Recruitment is often carried out over the Internet through social networking sites and chat rooms. Users are drawn or directed to specific websites where information, necessary tools and methodology can be developed and learned. Pathways to radicalization, such as networking and access to information about faking identities, making bombs and organizing travel, are easily available. One participant noted that the perception of self-radicalization is false and could limit the scope of investigation and response. The world of foreign terrorist fighters is personal and immediate, globalized and multidimensional. It attracts numbers beyond the ability of intelligence agencies to physically track.

14. The journey from initial interest to radicalization, to commitment, to action and, ultimately, to joining a foreign terrorist group has rapidly accelerated. That further complicates the efforts of the authorities to follow, intercept, investigate and prosecute cases. The time frame has been shortened and the recruitment age is younger. Foreign terrorist fighters include individuals as young as 15 or 16 years old and a significant number of women. Sometimes whole families relocate. According to prosecutors attending the meeting, authorities are struggling to address those new dimensions. It is not always clear whether women travel to engage in terrorist acts, to look for partners or to support their families, and whether entire families can be implicated in the crimes committed.

15. The risk posed by foreign terrorist fighters to societies is multifaceted. Previously localized conflicts have become international ones, and their impacts are more unpredictable, owing to the mix of persons becoming involved, and more diffuse, owing to the travel and return of individuals hardened by combat. There have been attacks by returned foreign terrorist fighters in locations such as Belgium, France and Spain. Statistics may show an incomplete picture, but they do help to illustrate the scope of the phenomenon and how it has spread. According to participants, as at October 2014, 72 cases involving terrorism in France were linked to the conflict in the Syrian Arab Republic, representing an increase of about 200 per cent in less than a year. Approximately 100 individuals were prosecuted and two thirds of them were in prison. In Bosnia and Herzegovina, it is estimated that of the 150 persons who had travelled to Iraq and the Syrian Arab Republic, 30 had been killed and 30 had returned. By comparison, the estimated 52 foreign terrorist fighters from Finland in the Syrian Arab Republic (42 men and 10 women) represented a significant number for a country with 5.4 million inhabitants. The picture is similar for the Netherlands where the intelligence authorities estimate that there are up to 160 foreign terrorist fighters from that country in the areas of Iraq and the Syrian Arab Republic, with 30 returnees. In the United Kingdom of Great Britain and Northern Ireland, the numbers are approximately 500 foreign terrorist fighters and 250 returnees. Approximately 56 foreign terrorist fighters from Indonesia have been identified as travelling to Iraq and the Syrian Arab Republic to join the Islamic State in Iraq and the Levant (ISIL).

2. Challenges in applying relevant offences and the rule of law

Existing laws offer numerous possibilities for prosecuting foreign terrorist fighters

16. In describing cases and existing legislation from their respective jurisdictions, participants disclosed numerous possibilities for prosecuting offences related to foreign terrorist fighters, or at least for stopping them en route. There is, of course, terrorism-specific legislation. The United States legal regime allows for the prosecution of the full range of foreign terrorist fighter actions, from planning to preparation to travel. Prosecutions are assisted by the legal framework for international cooperation, which has considerably matured. The main law on providing material support for terrorism was amended after the attacks of 11 September 2001 to enable the designation of foreign terrorist organizations. Consequently, anyone who provides any kind of material support, which is very broadly defined, commits an offence. The legislation enables the United States to address the phenomenon of foreign terrorist fighters without any major changes.

17. Pursuant to United States legislation, when a person plans to travel across borders to join a terrorist group, he or she can be intercepted after passing security at an airport, which is considered the threshold act, and charged under the material support offence. If a person supports an organization that has been publicly designated a terrorist group, intent can be inferred. Similarly, French legislation on criminal organization (*association de malfaiteurs*), like conspiracy charges, enables the authorities to arrest, investigate and prosecute foreign terrorist fighters in the early stages of the commission of the crime, including before the threshold of an attempt to commit an act of terrorism has been crossed. Convictions carry sentences of between 10 to 20 years' imprisonment. Recently, France amended its penal code to include the offence of terrorists acting alone (*entreprise terroriste individuelle*) to deal with the increasing phenomenon of terrorists acting alone. That offence is intended to enable the criminal justice system to intervene at the preparatory stage, even when a person is acting on his own and no criminal association between two or more persons is established.

18. In developing prosecution cases related to foreign terrorist fighters, States rely primarily on existing legislation. Participants shared how they used existing legislation in innovative ways to prosecute foreign terrorist fighters. In Turkey, for example, there was heavy reliance on legislation dealing with organized crime. In Indonesia, prosecutors used criminal code offences prohibiting the change of the constitutional system by non-democratic means. In China, prosecutors used a broad range of immigration law offences to prevent individuals from travelling. In Egypt, prosecutors relied on offences in its penal code, and particularly its provisions on threats to national security. The provisions were supplemented by administrative measures to ban the departure of individuals suspected of being linked to terrorist organizations or activities. Other countries had focused on financial crimes committed prior to the departure of those individuals. In Bosnia and Herzegovina, a June 2014 law banned leaving the country to take part in any paramilitary activity or battles abroad. To prove the offence, it was not necessary to prove intention to commit certain acts, only participation on a battlefield abroad. A conviction of that offence carried the potential of 5 to 20 years' imprisonment. Since the publication of the law, the authorities had noticed a preventive effect, with the flow of foreign terrorist fighters reduced, even though no decisions have yet been taken by courts in such cases.

19. Relying on non-terrorism offences can create its own problems. Even though reliance on such existing offences provides an immediate response to the challenge of foreign terrorist fighters, reliance on non-terrorism offences can create problems. Issues may arise either because courts are unwilling to accept such innovative interpretation by the prosecution or because such provisions include different acts and intentions as the basis for conviction. The reliance on non-terrorism offences may also pose challenges for international cooperation, either because States differ substantially on which kind of participation in foreign conflict is criminalized, thus raising issues relating to dual criminality, or because such acts outside the terrorism context may fall under exclusion clauses in extradition treaties, such as political offences. Relying on non-terrorism offences also runs the risk that the courts will not be able to address the full severity of the case and punishments may be very light, as is often the case when it comes to violations of immigration laws or petty crimes, such as fraud or theft, committed prior to departure for the conflict zone.

Enacting and criminalizing new offences to address foreign terrorist fighters

20. Taking into account the challenges of enacting and criminalizing new offences to address the actions of foreign terrorist fighters, several States have begun legislative processes aimed at amending their laws in order to craft specific legal tools to address the phenomenon of foreign terrorist fighters. That is the case for China, France, with the adoption by the French parliament of the anti-terrorism act of 13 November 2014, and Kenya. The French law, for example, creates the possibility to ban French citizens from leaving the country if there are reasonable grounds for believing that they are involved in travelling to participate in terrorist acts. The ban, which is imposed for an initial duration of six months and is renewable for up to two years, is imposed if a person is involved in travelling to participate in terrorist acts. At the regional level, the Committee of Experts on Terrorism of the Council of Europe, following a dedicated meeting in 2014 on relevant issues, initiated, with the support of the Executive Directorate, the process of developing an additional protocol to the Council of Europe Convention on the Prevention of Terrorism of 2005. The anticipated protocol would criminalize acts set out in resolution 2178 (2014) that are not already contained in the Convention.

Prosecution of preparatory acts and preventive offences committed before and during travel

21. Another important tool to prevent individuals from travelling is the prosecution of preparatory acts and preventive offences committed before travel. In one example, prosecutions in the Netherlands related to foreign terrorist fighters have relied on charges of preparation or training to fight, preparation to kill and preparation to make explosives. Not all of those offences are terrorism-specific, but they are equally applicable to the crimes being committed. In Indonesia, the law criminalizes any unauthorized military training, and prosecutors have used such offences to deal with foreign terrorist fighters.

22. Several participants highlighted the importance of using offences such as incitement and glorification of terrorist acts to deal with individuals before they travel. In many cases, prior to travel, would-be foreign terrorist fighters communicate extensively through social media and in chat rooms. In those forums, they may show sympathy for the terrorist cause, incite others to commit terrorist acts or glorify terrorist acts committed by terrorist organizations. When information about such a

person's plans to travel reaches law enforcement, a search of the suspect's computer or the covert participation in forums in which he or she engages could provide sufficient evidence to prosecute him or her with preparatory or preventive offences and enable the authorities to intervene and prevent travel. The challenge in relying on such offences is ensuring a balanced approach to intervention and necessary limitations placed on freedom of expression in order to identify the exact point where an extremist message becomes a prosecutable offence.

3. Generating admissible evidence

23. The challenges in generating admissible evidence against foreign terrorist fighters are complex and multifaceted, in particular when it comes to individuals who plan to join a terrorist organization. Obtaining admissible evidence was the subject of much discussion. The European Union has been collecting information on the trials of foreign terrorist fighters. According to the information presented at the seminar, there have been few convictions related to foreign terrorist fighters in European Union member States. Close cooperation and coordination between intelligence, law enforcement and prosecution agencies is necessary. Many participants noted that involving the prosecutor in such investigations from the outset can enhance decision-making processes and ensure a successful intervention and/or prosecution.

Converting intelligence to evidence

24. The challenge of converting intelligence into evidence upon which the prosecutor can rely and which can be admitted into evidence in court was discussed at length. It was also the subject of the seminar held in Ankara in 2011. As some participants noted, States may have obtained intelligence regarding a person's intent to travel, but it is very difficult to use that intelligence in court without exposing sources or methods. In order to deal with that challenge, Bosnia and Herzegovina has developed a practice whereby such intelligence serves as a basis for the use of special investigative techniques, such as interception of communication, covert searches on the subject's premises that may reveal propaganda materials or surveillance, that could generate admissible evidence. Several participants recommended the use of such intelligence for a more in-depth investigation of the friends, family members, schools and places of worship of the individual under investigation. Such an investigation may reveal the true intentions of the individual and enable not just the generation of admissible evidence but the use of other administrative measures to prevent the individual from travelling or the use of softer efforts for countering violent extremism.

Challenges in proving intent

25. Another challenge is how to prove the purpose of the act of terrorism (see Security Council resolution 2178 (2014), para. 6) before a person actually joins the terrorist organization in the conflict zone. Many individuals claim that the purpose of their travel is to provide humanitarian aid in destination countries. Another complicating factor is the diffuse structure of terrorist networks, which often makes the link between the individual planning to travel and the organization very tenuous. As several participants noted, individuals often travel to conflict zones without being part of any network.

Collection of admissible evidence from social media

26. Important evidence in the prosecution of offences related to foreign terrorist fighters can be collected from social media sources. The Internet and social media are crucial enablers in the recruitment of foreign terrorist fighters. The admissibility in court and the weight of such evidence of recruitment through the Internet was examined by participants. It was agreed that posts on Facebook alone might not sustain a prosecution, but they could be valuable pieces of evidence to show intent. Some countries have developed good practices for converting information collected through social media into evidence. Other countries, such as the United Kingdom, have moved in the direction of criminalizing the possession, collection or downloading of such materials. In Jordan, the prosecutor's office has developed the practice of bringing to court expert witnesses in social media. Expert testimony is provided in court to explain and prove the technical elements underlying the social media, showing the linkages between the accused and the relevant posts, and to provide context to courts on the role played by social media in the recruitment of foreign terrorist fighters.

27. Information collected from social media could also prove extremely useful to track the activity of individuals in conflict zones. Several participants highlighted the importance of continuing to collect such information for possible use in court if and when the individual returns to his or her home. Experience has shown that many foreign terrorist fighters keep in touch with their friends and families in their country of origin. Many are also actively engaged in recruitment and the glorification of terrorist acts committed by others in their organization, and they regularly communicate information about ongoing activities and plans. Frequently, they establish contacts with friends and like-minded individuals who are already in conflict zones. Such information can provide invaluable evidence if and when the individual returns to his or her country of origin and highlights the importance of effective international cooperation in the collection of evidence from social media.

Corroborating evidence about intent to travel

28. Other scenarios may draw the attention of the authorities but provide an incomplete picture. For example, authorities may have information that a whole family is illegally relocating abroad, having sold their various properties, and have deliberately not applied for visas. Even though that information would not be a sufficient basis for a prosecution, it could supplement other evidence to show the real intentions of the accused. In other cases, investigative authorities have noted irregular trip plans and have been able to use that as the basis for further inquiry into the real reasons for travel. In the Netherlands, for example, a system of safe disclosure of travel intentions was offered to family members of would-be foreign terrorist fighters.

4. Administrative measures

Travel documents and travel bans

29. A more straightforward and potentially very effective action is to track the reports of lost or stolen passports. In Turkey, for example, the authorities use that method as a way to expose the movements of foreign terrorist fighters. One participant stated that his country had noted a trend of reporting lost passports and obtaining travel certificates in order to sell the originals as a basis for forgery. He

urged all embassies to urgently review such cases. On a related issue, one participant observed that the imposition of a travel ban was potentially one of the most effective and simplest measures to combat the phenomenon of foreign terrorist fighters, but it was not without risks. Some foreign terrorist fighters use false visas, or prefer to cross borders illegally and could be intercepted and charged on that basis. In another State, persons had been prevented from leaving but then carried out a terrorist attack in a train station on national territory. Addressing foreign terrorist fighters is not just about preventing an attack abroad but also at home. Prosecutors must decide upon the most effective and sustainable course of action in each case.

30. Moreover, travel bans are generally temporary measures and must be justified by reliable and credible information and anchored in law. Otherwise they may unreasonably infringe upon a person's right to freedom of movement. States do, however, have a right to control their borders. The balancing framework of international human rights is critical; interference with a person's rights must be legitimate, necessary and proportionate. The failure of States to respect those rights and to apply the rule of law in accordance with resolution 2178 (2014) is one of the factors contributing to increased radicalization. Some States are further armed with laws that empower them to strip a person of citizenship if he or she shows allegiance to another country. However, it was pointed out that ISIL, for example, is not a country.

5. Financial leads

Investigating financial crimes committed before departure

31. Financial investigations, including the investigation of financial crimes, can significantly assist in exposing individuals' intentions. In some cases, the cost of travel may be equivalent to a few months' salary and many would-be foreign terrorist fighters do not have the money to travel themselves. Vulnerable persons of low income and without a steady job may obtain money from others, and that money may originate from financiers abroad. Such funding can be tracked. In several cases, prosecutors have been able, through financial investigations, to identify the sources of such monies. In other cases, individuals commit crimes such as fraud, theft, tax evasion and money-laundering as they prepare to travel. Prosecuting authorities can and have exposed the falsehood of suspects' stated purpose to travel for tourism by proving that they have sold all family property before attempting to leave the country. The sudden sales of property for lower than the market value of those assets in such cases could provide corroborating evidence of the intent to travel abroad for a different purpose, such as to join a terrorist organization.

Persons or organizations that finance, fund or facilitate the travel of foreign terrorist fighters

32. It seems clear that departures are now much more organized and are often backed by financial networks. One participant discussed the possibility of applying lessons learned from successful prosecutions of organized crime to those of terrorism and foreign terrorist fighters. Some countries already use participation in an organized criminal group as the offence to prosecute terrorists. In one State, much attention is given to links and similarities in modus operandi between foreign terrorist fighters and organized crime. In some instances, travel is facilitated by

networks of criminals who arrange fraudulent passports and border crossings. Similarities in the financing of travel may mean similarities in moving money. Therefore, financial investigations may expose the existence of offshore accounts, professional money managers, frontmen and mediators. That creates investigative and prosecutorial opportunities. As with other financial investigations, the involvement of the relevant tax authorities, customs authorities and the financial intelligence unit at an early stage may assist in identifying links and methods of work. One participant explained how focusing on financial investigations could help in understanding the support structure of the organizations of foreign terrorist fighters and lead to the prosecution of networks that facilitate travel and assist the organizations in financing their activities. He referred to the potential of conducting an undercover operation against a financier for travel of foreign terrorist fighters.

33. Other participants confirmed that terrorist financing legislation had already been successfully used to prosecute offenders who had sent money to finance the acts of Al-Shabaab fighters in the Horn of Africa. In one case, information provided by the anti-terrorism unit of Kenya was crucial to proving the connections to the terrorist organization, underlying the central role played by international cooperation. Other offences related to foreign terrorist fighters were intercepted in the course of investigating tax frauds that were perpetrated to fund the travel of five nationals to the Syrian Arab Republic. The ongoing prosecution also alleges the fraudulent establishment by a terrorist group of a humanitarian aid organization as a front for travel through Turkey, the acquisition of certain equipment and the uploading of a recruitment video and army manuals onto the Internet as part of a "boot camp" programme. Charges in that case include murder with terrorist intent, recruitment, provision of training and tax fraud.

34. In the Netherlands, prosecutors brought charges of extortion, money-laundering and raising funds for a terrorist organization against five alleged members of the Liberation Tigers of Tamil Eelam, a rebel group in Sri Lanka. The court found one of the accused, who had acted as the group's overseas bookkeeper, guilty of involvement with a criminal organization but not of supporting terrorism. Furthermore, as the European Union had placed the group on a list of terrorist organizations, it was held that the fundraising operations in the Netherlands were also unlawful.

6. International cooperation and challenges

35. Prosecution of foreign terrorist fighters relies heavily on evidence collected in countries of origin, countries of transit and countries of destination. Repeatedly highlighting that observation, participants agreed that the strengthening of all forms of international cooperation was critical to successfully bringing foreign terrorist fighters to justice. Participants discussed their experience in dealing with international cooperation. Some highlighted the advantages of establishing a bilateral treaty, as that demonstrated a stronger political will and trust between two countries. Many emphasized the importance of trust on all levels as a necessity. The bottom line, as one participant stated, is that we need to activate our collective knowledge.

36. Challenges in providing effective international cooperation stem from the facts that States rely on different offences to prosecute foreign terrorist fighters and that many States apply legislation that does not deal directly with terrorist offences.

Some participants urged the use of international conventions and treaties as the basis for international cooperation. However, the existing framework of international conventions does not explicitly cover all the acts requiring criminalization under resolution 2178 (2014).

37. Admittedly, the landscape for international cooperation is not perfect. It is not possible, for instance, to pursue mutual legal assistance with some countries of destination, and it is very difficult, if not impossible, to directly collect evidence on the ground, where conflict and terrorist activity may be taking place. In quite a few instances, States are unable to pursue cases or charge their nationals in absentia while they are abroad, but must wait for them to return. Several participants highlighted the challenges in relying on outdated laws and procedures for international cooperation. Some mentioned the need to use more joint efforts, including joint investigations between countries of origin and countries of transit, in order to prevent individuals from joining terrorist organizations.

Alternatives to international cooperation with destination countries

38. There may be alternatives to compensate for the potential hurdles to cooperation with destination countries. Prosecutors can talk to witnesses in their own country, the family, friends and neighbours of suspected foreign terrorist fighters, local and border police and community and religious leaders. The interception of private communication via telephone and e-mail with friends and family and posts on social media while foreign terrorist fighters are still active in a foreign jurisdiction are other valuable sources of information and evidence. Information collected from computers, mobile communication devices or SIM cards can also compensate for the absence of mutual legal assistance. It might also be possible to explore, in the absence of international cooperation with destination countries, the potential for returning foreign terrorist fighters as cooperating witnesses and reinvigorating undercover operations.

7. Prosecution dilemmas and strategies

Penalizing offenders in a manner duly reflecting the seriousness of the offence

39. Security Council resolution 2178 (2014) requires Member States to "ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence". Participants questioned the appropriateness of some of their criminal legislation from the perspective of the penalties carried by those offences. Some noted that where prosecutions relied on conventional offences to deal with foreign terrorist fighters, specifically before they travel, judges may tend to provide lenient punishments. It has become clear that often judges do not share the opinion of prosecutors regarding the seriousness of the risk posed by foreign terrorist fighters. Some participants suggested that judges needed to be educated about the risks that the phenomenon of foreign terrorist fighters poses to national security.

Challenges related to young persons

40. The current phenomenon of foreign terrorist fighters includes young girls and boys under the age of 18 years, who are being targeted to travel abroad to participate in terrorist activities. In many countries, legislation enables interdiction

of their travel at the border, before departure. Any terrorist act would be prevented, but that raises the questions of whether the legislation should be levelled at such young offenders without the further commission of a crime, when a conviction would result in a sentence of between 15 years to life imprisonment, and whether such a sentence would be proportionate or appropriate, especially for a young, first-time offender who is intercepted at the border.

Prosecution dilemmas regarding travelling family members

41. One other dilemma regarding prosecution strategies relates to situations where family members are joining the would-be foreign terrorist fighter in travel. Questions arise as to whether all family members commit an offence simply by travelling and whether they should be prosecuted even if in some cultures a woman must follow her husband. The question of offences committed by parents against their children by taking them to conflict zones also arises. Participants noted that, in such cases, authorities had administrative and criminal justice options. Indeed, some countries have protection mechanisms available under family law to prevent foreign fighters from taking their family members with them to conflict zones. It was noted, however, that even family law tools, such as taking children away from their parents and placing them under supervised care, might have unintended consequences.

Prosecutions within the context of a comprehensive strategy on foreign terrorist fighters

42. Participants raised the issue of the role of prosecutions within the context of a comprehensive strategy on foreign terrorist fighters. The application of certain legislation could be counterproductive to the larger agenda to prevent terrorist acts in a comprehensive strategy on foreign terrorist fighters, and it might be preferable to charge the offence of illegal border crossing for such cases. It might also be asked whether taking a different approach should be contemplated for minors, where the development of a counter-narrative is equally urgent. In other instances, however, the available sentences might be too light.

C. Concluding observations

43. Over the course of the three-day seminar, participants addressed the issue of foreign terrorist fighters through the discussion of various factual scenarios. The seminar highlighted the ability of prosecutors to successfully charge offences related to foreign terrorist fighters within their existing laws. Participants were able to identify several options and approaches to prosecutions. They agreed that it was possible to apply existing law to the evolving phenomena of foreign terrorist fighters and terrorism. Although new laws may be helpful, or at times even necessary, prosecutors have risen to the challenge of finding new ways to use the existing laws at their disposal and must continue to do so. In so doing, it is essential to mobilize all forms of cooperation and to be proactive and practical.

44. The participants recalled the need to find a balance between prosecution and prevention. One could not be successful without the other. Tackling the phenomenon of foreign terrorist fighters required prosecutors to take a strategic approach that ensured respect for human rights and the rule of law. Prosecutors must consider the unique circumstances of every case, including the potential remorse of the accused.

Prosecutors must use the widest range of offences possible in their efforts to find that balance. Prosecutions, and how they are conducted, should never play into the propaganda of terrorists. This complex situation demanded complex solutions that encompassed an in-depth, nuanced understanding of the situation, a detailed knowledge of all the laws and tools available and careful consideration of the impact of prosecution decisions.

Enclosure

Sixth prosecutors' seminar on bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, held at the International Institute for Justice and the Rule of Law in Valletta, from 15 to 17 December 2014

Agenda

14 December 2014	
17.30-18.30	**Pre-registration and information session (Reception Desk, Grand Hotel Excelsior, Floriana, Malta)**
15 December 2014	
Day 1	
8.45-9.15	**Registration**
9.15-9.45	**Opening remarks**
	• Attorney General of Malta, Peter Grech
	• Chief of the Middle East, Europe and Central Asia Section, United Nations Counter-Terrorism Committee Executive Directorate, Ahmed Seif El-Dawla
	• Executive Director of the International Institute for Justice and the Rule of Law, Robert Strang
9.45-10.15	**Briefing on reports of the Security Council Committee and introduction to the topic**
	Report on the seminar on bringing terrorists to justice, held at United Nations Headquarters, New York, from 1 to 3 December 2010 (S/2011/240) and on the follow-up seminars held in Ankara in July 2011, Algiers in June 2012, Dar es Salaam, United Republic of Tanzania, in February 2013, and Tunis in December 2013, and introduction to Security Council resolution 2178 (2014)
	• Coordinator of the Legal and Criminal Justice Working Group of the Counter-Terrorism Committee Executive Directorate, David Scharia
10.15-11.15	**Submission of forms and coffee break**
11.15-12.30	**Foreign terrorist fighters: a new challenge for prosecutions**
	Overview of the actual threats, risks and challenges, scope of the current phenomenon, implications for Member States and prosecutions and approaches to address the prosecution challenges, including the Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighter Phenomenon of the Global Counterterrorism Forum
12.30-14.00	**Lunch break**

14.00-15.30	**Prosecutions related to foreign terrorist fighters** Types of offences and charges being used to prosecute cases related to foreign terrorist fighters; the most common kinds of cases, whether before travel, during transit or after travel; how to prosecute preventive offences related to foreign terrorist fighters
15.30-16.00	**Coffee break**
16.00-17.00	**Open discussion: critical gaps and challenges** The main challenges that confront prosecutors in pursuing cases to address foreign terrorist fighters
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Day 2	
9.15-10.45	**Generating evidence** The main kinds of evidence used in prosecutions related to foreign terrorist fighters; options to gather evidence for cases related to foreign terrorist fighters and the main obstacles; how to develop evidence and address gaps in prosecuting cases related to foreign terrorist fighters more successfully
10.45-11.15	**Coffee break**
11.15-12.45	**Regional perspectives on prosecutions related to foreign terrorist fighters** Perception of the phenomenon in different jurisdictions; the opportunities and challenges with respect to regional cooperation; the role of prosecutions in a comprehensive approach
12.45-14.00	**Lunch break**
14.00-15.00	**Hypothetical case**
15.00-15.30	**Coffee break**
15.30-17.00	**Hypothetical case** (*continued*)
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Day 3	
9.00-11.00	**New tools and opportunities** Security Council resolution 2178 (2014) places the spotlight on foreign terrorist fighters and the need to bring them to justice; new requirements for criminal offences; the relationships between offences related to foreign terrorist fighters, the financing of terrorism and money-laundering
11.00-11.55	**The way forward: open discussion with the co-organizers**
11.55-12.00	**Closing remarks**
12.00	**Lunch reception**